

Town of Milton
Planning & Zoning Committee Meeting
Minutes
May 29, 2007
7:00 P.M

Members Present:

Linda Rogers
Ginny Weeks
Bill Brierly

Dean Sherman
Louise Frey

Michael Filicko
Ted Kanakos

Others Present:

Bob Kerr
Tim Willard

John Brady

Robin Davis

Public Hearing

Linda Rogers called the meeting to order at 7:10pm.

Linda Rogers: We have a request from Robin that if you want to speak, or when you are allowed to speak, or when you're asked to speak, please come to the microphone and state your name prior to the time you make your comment. He has also requested that those of us on the board say our name before we make our statement because there is someone else who is doing the minutes and they don't recognize the voices at this time. So we are going to try and remember to do all these things.

The first item on the agenda is the application of Shipbuilder's LLC is requesting preliminary approval for a major subdivision for a parcel of land on Mulberry Street. The property is R1 and is further identified by Sussex County Tax Map and Parcel 2-35-14.00-565. Is there anyone present on behalf of this application?

Vince Robertson: I am an attorney with Griffin and Hackett. I am here on behalf of the applicant which is Shipbuilders LLC and I thank you chairman Rogers and the rest of the commission for the opportunity to appear in front of you all tonight. By way of a little bit of background, there's some preliminary things that I wanted to go over with the commission. I feel like, I've seen a lot of you on this application over the years, but any rate to bring you all up to speed, we had a memo that came to us from the town, from Robin Davis, about what we need to do to be here this evening, and I wanted to go through that quickly, because one of the major things is making sure that we got the notices out to the adjacent property owners. I wanted to submit that to the Town. We were required to send it out certified mail with the notes the Town prepared. I have a receipt from the certifieds and the signed ones that we have back so far. Obviously not everyone's returned or picked up their mail yet, so as they come in (unintelligible). The next item, which I will go over in a little more detail, was a revised subdivision plan that states it's a preliminary plan replacing the conceptual plan and 20 copies submitted no later than April 10th. That was achieved and you all should have copies of the current site plan, labeled preliminary plan in front of you. It is for 7 lots. The next item substance was site plan changes addressing the comments from Cabe Associates dated November 16, 2004 and you should have a copy of that in the records. The first item on that

November 16 memo was that a decision first be made concerning whether this parcels open space, recreation area, can be subdivided. The commission wants input from Mr. Willard (?) and as the commissioners who have been present throughout these hearings over the past several years knows that's been one the items of contention that's required some research. Frankly by Mr. Willard, on behalf of the Town, I think Mr. Brady has looked at it as well, and certainly still provide. We presented site plans that were recorded in 2000 that were signed by Mayor Bushey stating that these areas were reserved for open spaces. What I'd like to do is just resubmit them to the record of the December 20, 2006 letter from Mr. Willard that was sent to Mr. Brady and the planning commission was also copied them. And in that letter the first part already states "In addition, I am enclosing a plot that was signed by the Mayor in October of 2000 as recorded in Book 69, page 50 which designates this area as reserved for future development, therefore it is my conclusion based on this research, that the 2.4 acres considered for subdividing is not barred by a previous plot designation". It goes on to say on the second page "that this subdivision appears to meet the statutory requirements of the zoning". And although that's in your file, and it should be, I want to submit additional copies of that again for the record. One of the additional requirements was that the status of the building that was in the "remaining lands" on the prior plan is unknown. If this building is to remain as the clubhouse, there's interest in parking area. There is also a question about the lot lines concerning that particular lot. That has been resolved as the new plan shows that's actually going to be a single family lot with that building returned to it's basically, original design as a single family home. That's how the structure was done (unintelligible). The other comments really carry forward to Cabe's, or Mr. Kerr's current memo with regard to this plan, so I will address those when I get to it. What I'd like to do now is turn my attention to the plan, and I hope this works for the commission because I know there's some people that here in interest so I've set these up over here just so you all, since I know you have copies of it, that way people in the audience as well can see it. Now, as we stated again it's R1 which allows single family residential development. Now what I've done, just more for the members of the public, to show the original plan which had that remaining lands issue just by contrast along with the new plan that shows the 7 lots. They all exceed 10,000 s.f. as required by the Town code. They all have 75' of frontage with 100' of depth. There's 3 lots that run on Mulberry Street and then there's 4 lots that front on Shipbuilders. In conversations with DelDot, preliminarily we've been looking at where entrances should be located on Mulberry Street and turning lot 3 so it's entrance is on Shipbuilders. There's ongoing discussions over the site location of the driveway, particularly since Mulberry Street is a DelDot street, whereas Shipbuilders is not. As stated on the plan, there will be sidewalks. I did get one question this evening already as to how come the sidewalks aren't specifically shown on the plan. They are noted in note 2 of the plan, however, because it's a preliminary, certainly if we put it on the plan they are going to be there, but since we still have to work with DelDot where the streets would go, that will show up on the final plan the exact location of the sidewalks. The utilities for water and sewer will be provided via the existing service lines with the connections made at the developers' expense. I do recognize for both Mr. Kerr's, or Cabe Associates, comments that there may or may not be sufficient capacity. Obviously that is something that's going to be addressed at the time the permits are pulled, which is separate and apart from that. We recognize that we'll have to deal with the sewer issues perhaps when the time comes. As I said, this was originally...the Shipbuilders project has gone through several mutations over its life and I've gone through those at length before. I am not going to do that again particularly based on Mr. Willards review of it independent from mine and his conclusions that I it was reserved for future development to the extent that the commission has questions about that or the members of the public do. We do have copies of those recorded plans that were signed off by the Mayor from 2000. Again, those are the plans that I looked at and Mr. Willard looked at and that was the

subject of Mr. Willard's letter that was cc'd to the commission, and that I referred to and entered into the record. They are all pretty straight forward. They are going to be consistent with what's in Shipbuilder's currently, actually they will be a little bit larger, the lots will. It will be an improvement to this entrance area. It's going to be an overall benefit to the whole area of Mulberry Street including the entrance to Shipbuilders. One of the things we did last time around was show some conceptual drawings of the types of homes that would be built and again, for anybody that wasn't here previously, that's the kind of home that we're looking at. Now certainly, the type of home and whether it fits on the lot is going to have to be dealt with at the time the building permit are pulled. Right now we're just asking for preliminary site plan approval. We're not getting into the homes or the nature of the homes but that's frequently a question that's ask is what are you looking to do there and I wanted to give the commission and the public some idea again of what's being proposed and all those would fit on these lots as I said they all exceed 10,000 s.f. The smallest are 11,250 so they well exceed the minimum requirements. Four of them are 17,250 and the largest one is 22,310 s.f. so they are going to be quite large and on the individual lots where the dwellings, aside from where the dwellings are located there's going to be quite a bit of open space in the front yards and rear yards and side yards as well. There's a question as to whether we would need an independent storm water management on this lot as noted on the data plan. The impervious area, once the houses are built, is actually going to be less than what's there now with the parking that is shown around the existing building, but clearly again how this process works, we're asking for preliminary approval this evening, and if we get preliminary approval we have to get DelDot approvals; we're going to be working with the town some more; we're going to working with the Sussex Conservation District and other agencies that have jurisdictions to hammer out those types of details. So, I don't want you to think that because it's not on there it won't be addressed, it still has to be addressed with Sussex Conservation District. The district is very much aware of the Shipbuilder's project and what's going on around there; there's actually been discussions with the district about resolving storm water management issues throughout the overall Shipbuilders project. As I stated at the public meeting, I think it was last July, one of the things that would happen in conjunction with this, and I think there's proposed findings and conclusions that you all have, would be that we would comply with the Duffield report in conjunction with the development of this property. We tried to resolve some of those issues throughout that entire area. But with that having been said, really it's a pretty straight forward subdivision, it meets all the requirements as Mr. Willard says, it's compatible with the area; it's going to be similar to the houses that are out there and even in some extent larger because they are going to be 2-story potentially. We're going to take care of some of the storm water issues; we're going to improve that corner site at the entrance, so we'd ask that you look favorably upon it and frankly that is one of the things that the Town's code says that it meets all the statutory requirements, the planning commission shall make a recommendation for approval to the Town Council. I'm open for any questions that you may have. I'm sure that you do if this is going to be the same as prior hearings, so thank you very much again for your time and I'll answer what questions I can.

Linda Rogers: Does any members of the commission have any questions?

Louise Frey: When you came in originally, you were asking for 6 lots, now you're asking for 7? Is that right?

Vince Robertson: Yes.

Louise Frey: You've increased it by one lot?

Vince Robertson: Well, no. I know that sounds like a trick answer and I don't mean it to be. When we first came in it's shown on the original plan there was 6 lots with 30,000 s.f. remaining and that was going to have a building on it, and frankly it was a lot that was configured not necessarily in a course of the code and that the lot lines weren't in right angles to the road, and in

conjunction with the comments from the Town's engineer, we resolved that issue completely by straightening the lines on lot 6, eliminating some setbacks and parking questions that the Town had and turning that into a single family home, which is actually more compatible with what's around it. That way you avoid parking, traffic issues, it's lessened by the fact it will be a single family residence.

Louise Frey: So there is not clubhouse.

Vince Robertson: No, there's currently not a clubhouse as well. It's not used as a clubhouse. That structure would be a single family home or removed and another would replace that.

Louise Frey: Thank you.

Virginia Weeks: According to, just to orient me a little bit better, the pool, where is that located. Is that back yard of lot 6 now?

Vince Robertson: There isn't a pool there any longer.

Virginia Weeks: Where the pool was going to be.

Vince Robertson: Well, where the pool was, it was constructed and actually didn't get any use as my understanding.

Virginia Weeks: Is that located in the backyard of lot 6?

Vince Robertson: Yes.

Virginia Weeks: Thank you.

Vince Robertson: To the extent if there is any pool structure there, if it's going to be a single family residence that would have to be addressed.

Virginia Weeks: Are the owners of this proposed subdivision, although the corporation name may be different, the same owners of what was Shipbuilders originally.

Vince Robertson: If you could ask the question again, as I just want to make sure...

Virginia Weeks: I just want to know are we working with the same people that originally developed Shipbuilders?

Vince Robertson: No. To tell you the truth, I'm not sure as I stand here today that I can recite it accurately, because Shipbuilders goes back to the 80' and it went through several different owners that are completely unrelated to the current owners.

Virginia Weeks: We have already approved a subdivision on the left hand side, called the Orchards. We did that last year, so that's gone, and now we're being asked to approve this. What I want to know is where would the required open recreational space be for the rest of Shipbuilders if this is built upon?

Vince Robertson: What I said, getting back to what the Town's attorney stated, this is not considered open space based upon the fact that the Mayor listed this reserve for future development, so we have that.

Virginia Weeks: When it was approved it was the open space, so I just want to know, where is the required open recreation space for Shipbuilder's?

Vince Robertson: Well that was approved so long ago and much of it was approved before there was a required open space. What we're here before you tonight is on a piece of land that was reserved for future development. As far as open space on this, I just want to make sure that I completely answer your question, Cabe Associates' Mr. Kerr stated that it's a small development so it exempts the property from the public open space requirements set forth in the ordinance but under section 17.13 of the code, there's a means for making a payment for that.

Virginia Weeks: Right. I just want to know when the people in Shipbuilders bought their property, they were to have open space and recreation space available to them. Where is it?

Vince Robertson: To say that they were to have it, I said we had a site plan that was recorded showing it was reserved for future development and that's what it says. I disagree with the statement that they were to have it, because the town codes were different and didn't require it at the time of that application and that plan was approved.

Virginia Weeks: The advertisement for Shipbuilders, I believe, all advertise that they would have open recreational space, a pool and a clubhouse. Mrs. Bruce, who was on this commission until recently, when we met in December or when you met in December, spoke about the fact that when she owned a home there, they tried to establish a homeowners association and there were 50 or 60 people that wanted to come and it was made very difficult for them because they were not allowed the use of their clubhouse. So, going on all this, I have been told that those people expected to have a clubhouse, and expected to have a gathering area and expected to have open space. So I just want to know, is there open space? It doesn't have to be a clubhouse. Is there open space?

Vince Robertson: This is a project as I said is for 6 lots at the front. We're not talking about the entire Shipbuilders subdivision. Now, to answer your question further, I can't stand here before this commission and state what some realtor or somebody else who's selling properties said might or might not happen out there. They might have said there was going to be a water park there, water slides, who knows what, I mean, I can't speak for what somebody might have said at the time, some other realtor, whomever that they were selling properties. I will tell you that one of the things we've agreed to do and I went through this with the commission I know for the past couple of years. One of the problems is to form a homeowners association when you have a development that's been in existence since the eighties, that's developed over 20 year's, it's next to impossible because you have to get everybody to agree to do it. You can't have one neighbor who's a member is assessed for cost that everybody's using and the guy next to them doesn't want to do that, so to form a homeowners association at this point is virtually impossible. Whether it's Shipbuilders or whether it's any development around here, you have to do that from the start and long before the current developer came along that cows out of the barn, so to speak. It was done. What we've agreed to do though, and this was sort of a conversation with I had with Mr. Willard to the extent that there's a homeowners association that wants to be formed, we're going to cooperate with that homeowners association.

Virginia Weeks: That's what the previous owner said.

Vince Robertson: It's been tried; it's just been tried and failed frankly, not through any fault of the developer.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any questions of the applicant? Bob, do you have any comments?

Bob Kerr: I've prepared a memo. Typically we've been looking at that when you review it as part of business, whichever you would like to do it.

Linda Rogers: No, we can do it then, that's fine. Is there anyone else present that would like to make a comment in behalf of this application? In behalf of the application? Is there anyone that would like to make a comment in opposition to this application? Okay.

Allison Hughes: 403 Mainsail. My comment isn't really on one side or the other, it's more or less a (unintelligible) that I have for the planning and zoning commission. The lawyer had made reference to storm water and the drainage issues out there and as a resident on the street where many of those issues occur, I strongly, strongly encourage the commission to take that into consideration when approving another subdivision out there, while I realize distance-wise it's not in the same place. It's a shame when pumps have to run 24 hours a day on peoples' properties in order for the water to drain. It also has torn up the streets. I've had to replace two tires, not that it's all due to that, but it cannot help anybody's car. I'm fortunate at the end of the street that I live on doesn't as severe drainage issues, however, in order to drive to the back of the neighborhood, there's potholes everywhere, there's no top coat, and it's just a mess and enough is enough. I understand that litigation has been going on for quite sometime, but I personally have sent a letter in July of 2006 asking about this issue along with a few other things, like street

lights that did eventually get resolved, but quite frankly I think I can speak for a lot of my neighbors who are very fed up with this, and I would encourage the commission to take that into account and add that as a consideration to the approval of this particular subdivision. And that's really all I have to say about this. Thank you.

Linda Rogers: Would anyone else like to make a comment?

Nancy Davis: 115 Mermaid Lane. I am one of the people who bought there with the assurance that we, once the lots were all sold, we would have a homeowners association, we would have use of a pool, we would have a recreational area. None of those have come true. The lighting is still a problem for me because the last 3 dividers (unintelligible) boulevard that goes in have no lighting whatsoever. In the winter, it is a dark hole back there. We've had crime, very serious crime. We don't need more houses right now. The houses that are being suggested, the ones that would have driveways on the boulevard, there are no other driveways on the boulevard. It's something new and different. It's such a hodge podge out there. You go from single family houses to duplexes to townhouses. I don't know what to suggest for you but I'd really like to have an open space where the children could play. The yards are very, very tiny; most of the children play in the streets. If they had an area where they could play, you wouldn't have to worry about them quite as much. Thank you.

Linda Rogers: How long ago did you purchase your property?

Nancy Davis: I originally put a down payment in more than 5 years ago. Supposed to have settlement in September and couldn't get in until January.

Linda Rogers: Okay, thank you. Would anyone else?

Shawn Christopher: I just wanted to agree with Nancy. I live on Mermaid and I bought my house in 2003; I put my deposit down in 2002 and I also was under the impression that there would be open space. Right now there is no place for kids to play; there's no place to walk your dog. I disagree that this is going to improve the entrance, the appearance of the entrance. It's beginning to look like squalor in that area right now with all the tight fit of all those townhouses in there and now we're going to add these 7 houses and 14 more cars right on the corner; this is going to look ugly. It wasn't that long ago that we all talked about urban scrawl in Milton pertaining to its little town appearance and it's just going to be one ugly looking mess. That's all.

Linda Rogers: Anyone else like to make a comment?

Debra Brenniman: 220 Bay Court. I was one of the first people that bought a house in Shipbuilders and I have the original flyer here and it said that Shipbuilders would be featuring a community center, a swimming pool, tennis courts, daycare centers, lighted streets, cable television, shopping center and a grocery store, and I just think that we need to keep that as an open area and it would be nice if we could go back and accomplish these things that were first promised to us way back when I bought in 1989.

Michael Filicko: May I see that Ma'am, please?

Virginia Weeks: Madame Chairman, may we ask her if we could borrow that so Robin could make sure there is a copy of that in the file?

Linda Rogers: That would be up to Miss Brenniman if she wants to relinquish possession of that or whether she would want to take it down.

Debra Brenniman: You may keep it, I have another one.

Linda Rogers: There you go. Does anyone else like to make any comments?

Janet Roski: 105 Genoa Lane. I too have the original document that I've been in my house for 9 years. We picked that particular lot to have our house built on because it was designated recreational area and I think that should remain an open area on Mulberry Street. We don't want to put these houses here. Evidently with the pool (unintelligible), tennis court. We also have a letter from March 23, 1998, that it said "for those of you who are interested in a community

building will remain available for renting at the same rate of \$2.00. We apologize for any inconvenience". (Unintelligible). Earlier in the letter they state (unintelligible).

Linda Rogers: So what's the second part of that letter say? That they refunded your money?

Janet Roski: Yeah, I think that it was still rented the clubhouse for \$50.00.

Linda Rogers: And what's the date of that letter?

Janet Roski: March 23, 1998

Michael Filicko: Linda, could we ask for time to copy that also?

Linda Rogers: Would you be willing to allow us to copy that?

Janet Roski: Both of them?

Linda Rogers: Yes. You can just give it to Robin, and you'll see that she'll get it back?

Thanks. Does anyone else have any comments they would like to make? Does anyone on the board have any questions?

Virginia Weeks: I have a question for... I have a question about the document that I guess Mr. Willard drew up, if I could, are you going...please. I just want something cleared up. In paragraph 13, it states that the current developers, Shipbuilders LLC, and these conditions apply to the developers, its successors and assigns and shall be recorded with the subdivision plot. Does that mean that his responsibility for fixing the storm water would be assigned to the people who bought those lots?

Tim Willard: It would actually, and back up for a second, what I sent to you all was just a proposed findings, facts and conditions. I represent the Town of Milton and I represent them specifically in litigation law in with the concerns Mrs. Hughes has about the storm water and I'll spare you all the procedural posture other than to say that that litigation is still pending. It's the Town vs. Shipbuilders, so when I became aware of this, I certainly said this would be an opportunity for them to address that issue; that is the storm water; to the extent the Town would put provisions on subdivisions, and the applicant was perceptive that this is the culmination of me talking to Mr. Robertson and our attorney. My purpose in putting that paragraph in there was to anticipate what's happened, maybe it has happened to us in times already, but that is the development has changed hands, and if the Town Council approves the subdivision or some form of it, my recommendation is they approve it with the condition that the storm water be fixed. And there are other terms in here that indicate that it should be done by January 2008; no (unintelligible) until it's done. These are things that I put in there that the applicant object to safeguard the Town, make sure what happened before doesn't happen to just drag along basically. The last paragraph is one of those things merely saying if the current developer doesn't, this agreement will run with the land, so it gives the Town some security, is my intent, to say that they dodge it by selling it the property your assigned. That is the purpose of that.

Virginia Weeks: I just want to know will that encumber if they sell the lots, will that encumber the owners of the lots?

Tim Willard: The new lots in the subdivisions. What would happen is they could not sell the lots developed. Another words, they could not get a CO, a certificate of occupancy, unless the storm water was completed. So to that extent it will be encumbered, then he hires an attorney. We have a responsibility to do a title search and they find this agreement in the title search saying you have this provision, if it's not done you're not going to get a CO.

Virginia Weeks: Right. But we have no way of knowing if they were to get this subdivision approved whether they would just turn around and sell the lots rather than build the houses themselves. And should they sell the lots, and not the houses...

Tim Willard: Your points actually a good one. They could transfer the lots, I suppose, but it would be, this provision would never go off that land, another words, they can never develop it to sell without finished houses.

Virginia Weeks: Yeah, so the individual lot owner would then become responsible because he would now be an assigned?

Tim Willard: No, whoever the current owner of the land would be responsible. Yes, but when they purchase the land, I guess what I am telling you is that's why we have title insurance and searches on properties, they would be aware of this.

Virginia Weeks: That's what I want to make sure, that they would definitely be aware that there is a cloud on the title for this.

Tim Willard: Absolutely. That's why I put in there that it should be recorded, for if by chance they hid it somebody would be going not knowing. At least it's there and it would be very difficult to transfer those lots (unintelligible).

Virginia Weeks: Thank you.

Vince Robertson: There's even easier to that in that the proposed conditions which is Mr. Willard had agreed to, give the date by which that would have to be completed. Tentatively, I think what was proposed was January 1, 2008 and obviously that is going to slide depending on what happens. So its not as though this is going to be hanging out there indefinitely, considering we are asking for preliminary site plan approval and we need final before we even sell any lots even though were not going to do that. The time for fixing the storm water is running in the meantime and that was the point of discussion Mr. Willard and I had, so we're sure that if it was dropped they'd had said right in there if it's not done by the date, the approval is void.

Virginia Weeks: Thank you.

Linda Rogers: So is it the developer's intent to build houses themselves and sell the entire product or are you selling the lot and someone can build their own home?

Vince Robertson: It is the developer's intent to not to do, I think what that discussion was, is to build a house along the lines of what was proposed on the 7 lots.

Linda Rogers: They are going to build a house and sell the entire parcel?

Vince Robertson: That is certainly their intention, after they get the storm water fixed, because everybody hinges on that.

Linda Rogers: Okay. Does anyone else have any questions or comments? No, if not we'll entertain a motion to close the public hearing.

Dean Sherman: So moved.

Michael Filicko: Can I just ask one question please. Vince, given the fact thence the residents were promised a clubhouse and a pool, is there anyway that one of these lots could be turned into that for the residence since that's what they were promised when they bought their property.

Vince Robertson: I'll give you the long answer and I apologize. I'll give you the short answer first...No. The long answer is for a couple of reason, one I was looking at some of the information these ladies presented and that was prior developers and they go on with so much crap that they developed it, making it to before the current owner. The real reason though is to put in a pool, it's expensive and there's a lot of liability for that. And homeowners don't want a lot times, the expense of a pool and a clubhouse. Demographically, this is a wide range of people out here in Shipbuilders, from retired folks to people who are first-time homebuyers and everybody in between. And to build a pool and a clubhouse and have a homeowners association maintain, assuming that you needed to get everybody to consent to that, is just about impossible. That was the problem that was alluded to the prior builder, perhaps that we're not going to open the pool this year. They have decided that nobody was using it, it wasn't feasible to do that. So there's just not any benefit or means for doing that, and that is the long and short of this.

Dean Sherman: Several times this evening there's a point of issue that I am not sure everybody on the planning and zoning has any information to and that's the leverage about this crack in the storm water issue, and making that part of the approval process for these lots. The portion of the

storm water system that has failed and needs to be addressed, was that a portion of the storm water system that was put in by the current owner or previous owner.

Vince Robertson: It was a storm water management system and I am not familiar with the litigation or the design. There's other attorneys involved in that, which I haven't been party to, but it's overall portion to the rear of this is what's happened is the applicants in the Town and the Sussex Conservation District, have all looked at that but Duffield and Associates, which is an environmental engineering firm to look at what the fix would be and despite the fact as I understand (unintelligible). I'm sure the other terms basically (unintelligible). It was built to the standards that were signed off the Town but there's still some issues. We sort of looked at this as an opportunity to resolve things. Frankly, that exempts portions of this property to do anything until those pipes get off the property. Duffield and the Conservation district have been working towards a resolution (unintelligible) and the Town's involved in that, so it would resolve a number of things. Mr. Willard has been more directly involved, he may want to comment on behalf of the Town.

Dean Sherman: Do you know Tim?

Tim Willard: (Unintelligible) Mr. Robertson. He, the current developer I think constructed part of the storm water connected to what's there; to the extent they develop it further. I know one thing's clear about this development we wouldn't do it this now, but in 1989 things were done a little different. One thing's glaring at you clearly now you have a statute that requires a subdivision to have a homeowners association, and the county's the same way, you're dreaming of it otherwise, but that's kind of water under the bridge and that's why it's kind of messy. The existing storm water system is a closed system and part of the problems or issues with dealing with litigation is what's there and what's the problem. We maintained that new construction cost some of the problem because proper (unintelligible) fences weren't put up so it kind of filled up. The proposal draft that we've offered to you the complete locations with the applicant says that, and we've had some back and forth with this and I'm glad you brought it up because I have an amendment to the post conditions. It says that the applicant will put in a storm water system that will correct the problem. That's somewhat vague but we put in the language that will approved by the Sussex Conservation District and the Town engineer before they start doing it. We've already have had some of those plans, number one, in '05 Duffield did a plan using Christiana Excavating where they were going to expand on the closed system; put more pipe in and make it bigger so it could take more water. There's another system that is much more expansive to drain the storm water down to Wagoman's, and that would require run behind the school. My proposition, and I think the applicants were agreeable to this, is in the agreement, where the one you have right before you sights the Duffield plan, that is they won't complete the Duffield plan and it would be approved Sussex Conservation and the Town engineer. I would propose we added or if you'd consider it you would add the 2005 Duffield plan or the 2007 Cabe plan, that's a plan that takes it down to Wagoman's or another plan approved Sussex Conservation District and the Town Engineer, so you have all your bases covered. Your question was, what's there? There's a closed system that's malfunctioning. Ms. Hughes knows that Mainsail is the worst of it. And Mainsail is before (unintelligible) which is down (unintelligible), but if the Town were to approve this, that would give the applicant some flexibility to do either plan. In any event, they couldn't do any plan that is not approved by Sussex Conservation or the Town engineer, whether it's to open it up or to take it down to Wagoman's, which might be a little more complicated as far as taking a little more time. My objective on behalf of the Town is to fix the storm water, and the applicant, ironically, be that as (unintelligible) I think before this thing kind of (unintelligible) if you would, so we are working on it and have got them here, but we're at a point now where it's to have a legal subdivision. It would be pointless not to require provisions for them to have a storm water completed, and the applicants accept it and redeem themselves.

To answer your question Mr. Sherman, what actually will be done may not be carved in stone, but we have two plans that engineers have spent time on. Cabe, Scott did, not Mr. Kerr, submitted that in court in fact so... And the Duffield plan two years ago, so...

Dean Sherman: I guess the intent of the question was to try and figure out and I realize that something is playing out at Mayor and Council that we're not privy to all the details about, but it just seems kind of odd to me that if the, say for instance the current owners' obligation was to provide a working storm water system and did not do that, then why would they use that as a trump card or a leverage card to come for 6 or \$700,000 worth of more development, is what I'm getting at. But it may not be that. It may be that the system was sound per '89 standards and just failed and when it was designed it was not these current owners.

Tim Willard: I can see how you would get that perception.

Dean Sherman: It comes from lack of information and I waited till the last hour to ask the question, but I was hoping that some of the nitty-gritty details would have exposed itself by now but I'm not getting that.

Tim Willard: I can see how you'd get that perception. It's not been my experience in fact this is considered global solution. I think maybe I initiated it. A simple (unintelligible) declined for subdivision, I don't know who I was talking to first. I am going to request, or propose to the Town and the commission and the Town Council, they make a condition for storm water, because that's an issue in litigation. We all know who's responsibility it will turn out to be. I have my opinions but there's 14 other different. They'd still own the property; there's a long history of unclear approvals and things like that, so this just seems like a practical solution to make them do it. So there won't be any question about that, but what we want see done at the Town is that it is done right and done quickly, as it's been dragged out for a long time.

Virginia Weeks: Madame Chairman, may I ask Mr. Willard a question when Mr. Sherman is finished? Were you the Town Attorney in the year 2000.

Tim Willard: No, I left the attorney general's office in 1989, and Mr. Duboy was.

Virginia Weeks: I was just wondering with what authority, would you explain to me please what authority that the Mayor had to change the subdivision from recreational to for development? Did that not require a public hearing or some sort of tracks?

Tim Willard: You'll find Mr. Brady and I are trying to find more on that (??) but what we have is a recorded document and I think the minutes from that era and what happened are not complete or unclear so I can't really answer your question about what actually happened. As to the recorder of the deed knows how significant the presumption is of a court document

Virginia Weeks: That's why I asked if you were the city attorney at the time. I understand.

Tim Willard: That is one problem in the (unintelligible), you have been there a while cause this wasn't done and now maybe we wouldn't do it today on some of the checks one would put in place, maybe we were able to change...

Linda Rogers: Most likely what happened was when, for whatever reasons, Shipbuilder's was going through the divisions of ownership, because one side went to somebody, and one side went to somebody else and then the second side was totally changed from how it was originally recorded which was supposed to all be the same and then it went to single family houses and during this time we had staff issues within the Town where people were either not there holding a position; we didn't enough informed people holding positions to be reviewing everything and it is most likely the change occurred without anyone realizing it even happened. The wording on the plot changed from recreational to proposed or future development and I don't think it was ever anything that was actually reviewed to be recorded that happened.

Tim Willard: Barring an extension of limitations, (unintelligible) private owners, and someone in this Town accounts for some of it, it doesn't feel closed (unintelligible.....) title insurance,

(unintelligible) like that. It's my (unintelligible) that the Town just try to offer some kind of a suggestion for the solutions.

Vince Robertson: I just need to follow up on some of this with what you related to Mr. Sherman. I want to answer that question and yet you can use it with the word developers. Now I was part of the offer that seems like 3 or 4 years; some of you I know have come along in that time period, and when we first started doing this and is a standard today, this is a subdivision that meets the Town's codes, it does; it meets all the requirements of the Town's codes. And for that reason standing alone, it should be approved. There's now leverage here. Mr. Willard said he's involved in this litigation which I'm not, but he proposed that they would get this all resolved. He says that he thinks he has an opinion about how the judge is going to find on it. My client and his other attorneys, I'm sure they have quite the opposite opinion, based on the logistics. They will not concede to anything; this is a subdivision as the code says "shall be approved if it meets the Town's ordinances". At the extent that we can take care of some other stuff along the way, everybody is going for it, so I don't like that hanging out there that it is somehow or other leverage. I know it since you haven't been privy maybe I'll consider special provisions. Probably I haven't been either. I just didn't want that just hanging out there.

Ted Kanakos: Vince, I have a question. Is all this litigation between all these different parties are going on, the developer has assured us that he will take care of this storm water problem. If something comes along down the road where he's held not responsible, is he still going to do it or does this just go back into the atmosphere? In other words, made a commitment to fix the storm water, however of the different solutions. Now if homeowners, attorneys, the Town, the developer, all comes out in the end where he is not responsible for this, will he still be responsible? In other words, if it's found that he is not, the owner's is not only him through some...does he get out of it?

Vince Robertson: With a litigation, how that gets settled or whatever, I'm not in a position to comment on that, but the proposed conditions say that Mr. Willard drafted, it said that if it's approved they would have to be done by this developer. I don't know all the issues that are involved in litigation so to say what would be resolved and what wouldn't, I know that would be taken care. And that's because of all the engineering that's gone into it with Duffield Associates and Cabe.

Frank Capano: I would like to stand up there and let anybody ask what they want to ask.

Linda Rogers: And you're Shipbuilders.

Frank Capano: If anybody wants to ask me, I know everything that everybody's asking, if you want to hear it from me.

Linda Rogers: Is there anything that anybody wants to hear in particular? That they haven't gotten an answer to.

Virginia Weeks: I'd like to know if this gentleman was Shipbuilders when in 2000 the change was made to the recorded map.

Frank Capano: Yes, ma'am.

Virginia Weeks: How was that done? Was there a public hearing? Did it go before the Council? Did it??

Frank Capano: Ma'am, I hired the engineer down on 16, Meridian...

Virginia Weeks: So you don't know the answer to that?

Frank Capano: And they did everything for me through the Town.

Virginia Weeks: Thank you.

Frank Capano: But to these questions about the storm water, the stuff that's under the ground? 50 houses were built when we came there with the old system. Whether it worked or not, I don't know, it was the Town's. The rest of the roads weren't named. We change the singles, from towns to singles, and when we did that, they made us put a different kind of system and the

singles worked. Then when we went to the towns, it was an old plan recorded in the 80's, nobody made us change it. Because you already built fifty that way, so all we did was build the other 50 and now what's happening, the first 50 built, those catch basins are overflowing and I'm the low port part of the job; they're flowing down to my 50. And they're flooding what I put in, so we've got a 100 houses going into a 50 cistern that won't take it, because the other ones are clogged because they were built 30 years ago. They're supposed to be cleaned every 10 years. It says that right in the records that you approved. Nobody ever cleaned them, I mean, I didn't do anything wrong here. Now, if the road guy put the system in wrong, we'll dig it up and prove that he put it in wrong and fix them. But I followed every plan that you gave me that was approved. I did everything proper, and the reason I want these lots, I'll fix the problem, but I need help with the money. It's going to cost a lot of money to fix the problem. They want the lot, they want a pond fill where that lot is in the back, and they want a pipe run all the way down back through the school property. I mean so I need this money from these lots to pay for that. Do you want to fix the problem? Then you can keep your ground. That's where we're at. I don't know what else to tell you.

Linda Rogers: Is this actually dedicated to the Town...the streets? Are they actually dedicated to the Town, any part of this development is it actually dedicated to the Town for it to be considered a Town issue?

John Brady: It's a Town issue because of the safety and health issues out there. The streets have not, that my research shows, and I looked at Mr. Willard's research, and everything that was submitted and reviewed to file, and what Miss Rogers said earlier was correct. We have some missing records from the late 80's and some missing records around 2000. We do not have as detailed the records that we have now. I cannot find, as a matter of law, where the developer or the board did anything wrong in approving the recorded conditions that changed it to, changing it from open space and going into reserved for future development in 2000, and when I reviewed that, Mr. Willard brought that up in the letter he sent over. I did my own separate research to find anything that I could find that looked bad. I cannot, as a matter of law, say there is anything that the developer did illegally; I can't find anything, as a matter of law, where the Mayor did anything wrong; I can't find anything...I just can't find some of the records that show what was exactly done. And based on that, and based on the fact that until the project is completed, the previous existing zoning code did not require that the streets be turned over until the last house was in place and the last CO; that they have not been officially been turned over to the Town yet.

Frank Capano: The reason they haven't because I haven't finished on them, because we have a problem. I don't want to put the top on and then dig up the top. I'm trying to fix the problem. Whether you realize it or not, I am trying to fix it. I didn't call, but I am not leaving here until I fix the problem. I mean, I am definitely going to fix it, but I need help to fix it. We're talking about a half a million dollars to fix the problem. You want to pay for, you can have your property and I'll go away. If you want me to pay for it, I need these lots to sell, to earn the money to fix the problem. That's where I am at. I didn't do anything wrong.

Virginia Weeks: Madame Chairman, may I ask Mr. Capano a question please? How long have you owned Shipbuilders, sir?

Frank Capano: Ma'am, I don't know the exact date, but I am going to say '99, 2000, 2001. We just bought it.

Virginia Weeks: So when those properties were being sold, the advertisement said that they would have a recreation area, correct?

Frank Capano: I'm not...from me?

Virginia Weeks: What year did you buy your house ma'am?

?: 1989.

Frank Capano: Her words it's 20 years old.

Virginia Weeks: Now who bought theirs in about 2000?

?: I bought mine in 2002. I went there when I went shopping and looked at it, and Bill, your wife was in that office and her...

Linda Rogers: What is your question leading to?

Virginia Weeks: My question is where, is the open space for this development?

Frank Capano: There is no open space; none is required by the Town.

?: There has been no attempt to get them paved.

Frank Capano: We tried to open. If everybody in the development signed the paper, I would have opened the pool. We got 5 responses from the people; so we didn't open it. Same reason why the last 15 people (unintelligible). I'm no end to the thing here.

Virginia Weeks: That's what I am trying to understand Mr. Capano.

Frank Capano: Yes. I am the end. I mean, I would have opened it; it was already built. It came with the property when I bought it. I didn't have no, I'm finishing to building 6 lots on it. I didn't have no intention in the back failing with the storm water either. So since that is, and you are looking at me to fix it, I'm willing to, but I need help. I need the money to fix it. I don't know how else to say it.

Linda Rogers: Okay. Does anyone else have any questions? No? Okay. Thank you.

Louise Frey: Doesn't a Mr. Zonko own part of that Shipbuilders?

Frank Capano: He sold it to us.

Louise Frey: He sold it you?

Frank Capano: Yep.

Linda Rogers: Okay. Is there anyone else who has any questions or comments? If not, I'll entertain a motion to close the hearing.

Dean Sherman: So moved.

Linda Rogers: Do we have a second?

Louise Frey: Second.

Linda Rogers: Okay. We have a motion and a second to close this public hearing, all in Favor say "Aye". Opposed – None. Okay. The next item on our agenda which was to be a public hearing for Stansky Ventures has been withdrawn due to the fact that the applicant did not notify the adjoining property owners.

Linda Called meeting to order at 8:08 p.m.

Additions/Corrections to Agenda:

Linda Rogers: Are there any additions or corrections to the agenda other than the elimination of these two hearings? The hearing and the review of the preliminary site plan. Does anyone else have any changes to the agenda? If not, I'll entertain a motion to leave the agenda as is corrected.

Dean Sherman: So moved.

Linda Rogers: We have a motion to accept the agenda as corrected, is there a second?

Louise Frey: I'll second it.

Linda Rogers: All in Favor say "Aye". Opposed – None. Carried unanimously.

Approval of Minutes:

Linda Rogers: Next is the approval of the minutes of the December 19th meeting. Does anyone have any changes or corrections? If not, I'll entertain a motion.

Louise Frey: I'll make a motion to approve the minutes as written.

Dean Sherman: I'll second it.

Linda Rogers: We have a motion and a second, all in Favor say “Aye”. Opposed – None.
Motion Carried.

Linda Rogers: We have the minutes of the workshop that was held on May 1st. Does anyone have any changes or corrections to those minutes? If not, would someone like to make a motion?

Louise Frey: I’ll make a motion to approve the minutes as submitted.

Michael Filicko: Second.

Linda Rogers: We have a motion and a second, all in Favor say “Aye”. Opposed – None.
Motion Carried.

Preliminary Approvals:

Linda Rogers: The next item on our agenda is a preliminary approval of a major subdivision of Shipbuilders, LLC requesting a preliminary approval for a major subdivision of a parcel of land located on Mulberry Street. The property is zoned R1, as further identified by Sussex County Tax Map and Parcel # 2-35-14.00-565.00.

Virginia Weeks: Madame Chairman, I would just like to point out that there is a discrepancy that the, I forgot to bring up, that the agenda says it’s a major subdivision and the city engineer refers to it as a minor subdivision, and I believe it’s minor because it’s less than 10 lots. I just want it to be the same in both things.

Tim Willard: A minor is less than 3, but he’s referring to the open space that is less than 10, correct Mr. Kerr?

Bob Kerr: Yes, I think so.

Tim Willard: (Unintelligible), so it’s not a minor.

Virginia Weeks: It’s a major subdivision. Thank you.

Linda Rogers: Okay, does anyone have any comments in reference to this subdivision preliminary plan that is before us, and we’ve held a public hearing?

Virginia Weeks: Madame Chairman, I have a question. If it’s a major subdivision, not a minor subdivision, can you exempt the open space requirement?

Linda Rogers: I’ll ask our attorney that question.

John Brady: Any, I’m on page, section 17.13.c, Exemption for Small developments. Residential subdivisions and land developments with less than 10 acres of gross land shall be exempt from the land requirements. The problem is that the, when this was originally passed, under the original code, there was no requirement for open space. The current requirement for open space would exempt them for less than 10 acres, so my interpretation of this is there is no requirement for open space under the proposal here tonight.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any questions or comments?

Dean Sherman: How many residents are in Shipbuilders? Approximately? A 100? Would you guys know?

Frank Capano: I know how many I built but I don’t what’s already...

Virginia Weeks: Well there’s at least, how many single family houses?

Vince Robertson: 85

Virginia Weeks: 85, and there were already 55 townhouses, Mr. Capano said when he bought the property and he added another 50.

Frank Capano: We did 55 townhouses and 85 singles. I don’t know what was already there. Somebody else would build while we were. I think Sodler was building new buildings in the old plan.

Linda Rogers: I think we're talking 2-300 units probably. We're talking 1-2 people per unit, so there's at least 200 units out there with at least 2 people per unit most likely, correct?

Dean Sherman: I'm just trying to get a perspective on this and I certainly sympathize with any owner out there who's got issues, but let's say 200 units and there's 5 here, that's less 2-1/2 % of the people show up to voice their concern about it. Not that your concern isn't valid. One person could show up with a very valid, but I mean, there's not a rush; I think we had the meeting here anticipating a big turn-out in opposition to this and it's not present, so. Nobody has the stats and I'm just trying to get a perspective on. I would sympathize with one person out there that was suffering a hardship or potentially would suffer a hardship. This specifically for you, this may be an avenue for you to solve your issue, not the other lady, I'm sorry I'm not good with names, not your issue if you bought that lot anticipating that was going to be vacant spaces in behind you. It's a tough call.

Linda Rogers: Does anyone else have any comments?

Virginia Weeks: Do we have...is this map what we want to pass, this site plan?

Linda Rogers: That is what's presented for preliminary review.

Virginia Weeks: Does it have storm water on it? No. Does it have lighting plans on it?

Linda Rogers: No.

Virginia Weeks: Does it have the lighting on it...street lights, etc?

Vince Robertson: All those, if I may, I know the public hearing closed but Mr. Kerr reviewed those and storm water management to this site, there's been a preliminary discussion with Sussex Conservation District and I know the engineer from that end put a note on here that it's actually going to be less impervious area than currently that is required. If preliminary approval would be granted, in regard to all those issues, those are the things that would need appear on final site plan for your approval. After Sussex Conservation District looked at it, after the Town engineer got another crack at it. We can't put storm water management on there because Sussex Conservation District won't even look at it at this point unless you have preliminary approval. But based on what the engineer said, that doesn't sound like it's going to be viewed anyway, so it shouldn't have to go (unintelligible).

Virginia Weeks: Mr. Kerr, I understand there's a note on the drawings indicating sidewalks will be provided. Do we need to define them at this point?

Bob Kerr: No. The important thing at this point is that the preliminary drawing reference sidewalks and then that in the construction drawings and the final drawings that the sidewalks be provided. If storm water is necessary, then it be provided in the final drawings. It's items that you don't address at all at the preliminary steps or phase that may come back to haunt you later. If you say something needs to be shown on the final drawing at this time, then it does have to be shown. If it's not shown and you don't require it to be shown on the final, that's when we've had difficulties in the past.

Virginia Weeks: Thank you.

Linda Rogers: So would you like to review your comments at this time?

Bob Kerr: Certainly. First one would be the drawing shows an area of approximately, it should be 2.445 acres, not 24,000 acres; a small typo. There's seven lots being proposed, one of the lots being where the existing clubhouse will be converted into a single family residence. Mr.

Robertson already stated that they are aware of the problems with the capacity of the sewer system and that will be worked out as they proceed forward in this proceeding. I bring it up only so it doesn't become a surprise to anyone down the road that that is an issue. You know I always put that on, maybe. Little concern that they have to tear up too much of Mulberry Street in order to make the connection so anything that can be done to connect it off of Mulberry or in another manner, connect water and sewer should be provided. Sidewalks are to be provided along both streets and they have a note that says so. Shipbuilder's boulevard is a collector street; you may

wish to prohibit cars from backing out onto the street and that's hard to actually prohibit someone from backing out on the street, by requiring that a turn-around be available in the driveway either as a T or driveways that go around the back of the house; some means or method that a car can turn around on the property and drive out head first onto the road; might be something you want to consider as a requirement. DelDot not only should be, but has to be consulted for driveway entrances onto Mulberry Street and that's one of the reasons why when I met with the developer a few weeks we talked about having double driveways on the project to limit the number of curb cuts. DelDot doesn't like to have curb cuts near an intersection, and so this gets the driveway as far away from the intersection as possible. They aren't showing storm water management as we just discussed, but I'm not sure where the Sussex Conservation District will stand on that, whether they will look at the fact that the impervious area as it was when this was filed whether that counts. Sometimes the Conservation District goes back before that say before that it was a field and that's what you have to use. So that's their call, how they want to proceed with that and we as the Town don't have a lot of control over that; it's how Conservation District wants to proceed. What we need from the developer on that is a letter from the Conservation District approving the plan. And we talked about the exemption from open space. When this project started, we must remember that this subdivision ordinance that we are now using was stopped in January 2004, so anything prior to that had not requirement for open space; there wasn't and we're just sitting here reviewing that again to make sure that I carry a copy of the ordinance, so we talked before January '04 there was not requirement of subdivisions for open space and this one, because of it's size, we're only looking at 2.44 acres of land as this portion of the subdivision. It would be exempt from the open space requirements. The ordinance does require a cash payment, it goes through a definition of how that's determined, is paid to the Town in lieu of an open space so the Town can take that money and apply it to open space in other places for parks or playground equipment down at the main park there by the water tower. The ordinance talks about shade trees being provide subdivisions, but it never says that they have to be provided. It talks about where to put them and their sizes and some things like that, but it does not require shade trees to be provided. On some of the, and it's been more of the LPD communities, you have required 2 shade trees per lot behind the sidewalk or behind the curb. You may want to consider that. There's a section, 7-26 in the subdivision ordinance that has all the requirements for the final drawing; what has to be provided and there also have to be construction drawings prepared; how they are actually going to connect into the water and sewer system. They have a building height...something tells me that the last part of that sentence came from a previous one...it should have been stricken from this. And if I can answer any questions you might have.

Ted Kanakos: I have a question to Vince. Are there garages on these proposed houses, do you know?

Vince Robertson: I don't know if that's been determined yet. I know a lot of that is going to have to be dealt with depending on what DelDot says with that (unintelligible) on Mulberry Street. And one of the things that they get into is that they want side-ins (unintelligible). I don't know if we've gotten that far into the planning of the houses yet.

Ted Kanakos: And what provisions are there for like a T going into to able them not to back out?

Vince Robertson: That's the kind of thing that DelDot's talking about at this point again if we get preliminary, we have to go back to DelDot, you know, (unintelligible) that kind of thing they want to require.

Ted Kanakos: Okay. Lighting. Someone mentioned lighting and nothing, I don't think, was mentioned about lighting. Is there lighting?

Vince Robertson: There is none proposed but certainly street lighting with a requirement by the commission. There have been a lot of time that that's coordinated through Delmarva Power or the Coop, I'm not sure which one is (unintelligible).

Ted Kanakos: And do you think the developer would have a problem with putting some trees in?

Vince Robertson: That was one of Mr. Kerr's requirements that I thought that they didn't have a problem with. We'd be willing to show the trees on the final site plan.

Ted Kanakos: I'm basically concerned about people backing out onto highways.

Robin Davis: (Unintelligible).

Ted Kanakos: Yes. I'm basically concerned about people backing out...they're on a cell phone, they have a cup of coffee...they're backing out onto a road. Even the most marginal driveway should have some turn-around. If you have a garage, you'd automatically have the turn-around I assume. But without it, there should be some issue, something.

Vince Robertson: And that is one of the things that I would ask, in all (unintelligible) the commission not to deal with driveway definitions. We realize that; DelDot realizes that, and I think there was even some discussion about looking at somehow a way to do alleys and shared driveways, and again, that is something we are aware of and we're going to work with.

Virginia Weeks: Madame Chairman, I'd like to ask Mr., who's going to be responsible for the maintenance of the gardening and landscaping on the boulevard?

Vince Robertson: The boulevard at this point is not part of this application. And as (unintelligible) said, there's been so many owners involved, I can't sit here tonight and tell you who is responsible for that.

Virginia Weeks: Well somebody has to be responsible for maintaining that.

Vince Robertson: Well that's not an issue that's before the commission tonight, and that doesn't seem to me, because that boulevard is not part of the subdivision application. I'm sure that Mr. Brady or Mr. Willard, and I'll cooperate, to find out the answer to that, but I don't think that (unintelligible) this evening.

John Brady: That is not part of what is in front of you tonight. Unfortunately that is not something that absent a affirmative agreement by the developer into the conditions that he would take responsibility is something that you could unilaterally impose.

Virginia Weeks: Do you think the developer would be willing to take on the responsibility and to assign that to the landowners?

Vince Robertson: I can't say that this evening because I don't know who owns it. There have been so many different people.

Virginia Weeks: Mr. Capano, who owns the...

Frank Capano: I can build it, but it was already then when I bought the lot.

Virginia Weeks: But you bought that road.

Frank Capano: From the Zonko (??).

Virginia Weeks: So you own it at present?

Frank Capano: I don't know. No, I don't own the street. You own it from the (unintelligible)

Virginia Weeks: Okay, thank you. Who owns the streets Mr. Kerr?

Bob Kerr: I am not sure who owns the street. I don't believe any of the streets have been dedicated or have been accepted by the Town. They are dedicated to public use but they have not been accepted by this Town for maintenance. I would guess or suppose that the Council, when the adopt maintenance of the street would, or could, at that time determine who would be responsible for landscape maintenance.

Virginia Weeks: Thank you.

Louise Frey: I have one more thing. I'm back to the number of lots again. Under your general notes, number 4, you have 6 additional lots and I believe you are building 7?

Virginia Weeks: 6 additional residences.

Frank Capano: The clubhouse is over there.

Virginia Weeks: It says 6 additional residences.

Vince Robertson: Yeah, that's referring to actually the impervious area. It's 7 lots. It talks about, for the purpose of storm water management, after reciting what's there with the swimming pool area, the tennis courts and the clubhouse previously, they proposed development of 6 additional residences aside from that building. It's 7 lots, I mean that's what it clearly says, that's with the application.

Louise Frey: It's 7 but that was never a residence so it should be, shouldn't this number down here be 7 additional residences?

Vince Robertson: It could be and you know, it's just talking about storm water management for the Conservation District for with the focus area. (unintelligible) 7 residences that would be there, that's all.

Louise Frey: Well, I'd like to say 7 since you're building.

Linda Rogers: So, Mr. Brady, your opinion is, or give us your opinion, that when this entire development was originally recorded back in the 80's, and it was recorded having a recreational area, and people bought with the impression there would be recreational facilities and somewhat of an open space for this entire development, and through some type of paper change in the title of the description of this portion of the development, this parcel of ground now becomes a legally, developable parcel of ground?

John Brady: As of, I believe the date is October 14, 2000, whatever the date says it's recorded, and I'm looking here in my notes from that, that the Mayor, and it was signed off by the then secretary of Town Council, stated approved the change. At that point, there was no open space requirement under your existing ordinances and in the absence of anything, I have to say that the last recorded plan applies. You've asked a further question. This is where I sound more like a professor of law but there may be an argument made in an appropriate court that is called an estoppels' argument that we had detrimental reliance on the documents that were given to us at the time when we bought our properties in the late 80's as the first lady said and continuing on up through the 90's and we relied on those representations. That argument is not before the planning and zoning commission tonight. If that argument is made, that argument would be made in the court of chancery and the Town would have to be probably pulled and at that point I would have to advise the Town on how to proceed. What's in front of you tonight as I understand that application and the question I had for Robin, is I know that Mr. Robertson has been here a number of times, do you have a the date the original filing was done, because I just want to confirm for the record before you vote, that it was prior to the 1/1/2004. I believe it was, from what I read, but I can't remember the date specifically and at such, you have to rely on the law of the ordinances that were in effect at that time. The arguments about reliance, detrimental reliance, and possibly an estoppels' argument as I said are not before the commission here tonight.

Vince Robertson: I would like to add one thing and I think they are. The applicant this evening, isn't held to rely on what the Mayor said, (unintelligible) on that plan. We do have vested rights and said that reserved for open space, excuse me, reserved for future development in that 2000 plan. We have vested rights and there's supports that have decided clearly on that. My client had the approval of the Town and entitled to rely on them. Instead Mr. Brady is talking about all the property owners. I just want to make clear that the same applies to us.

Linda Rogers: So, Mr. Brady, what you are saying is this commission has before them a developable piece of property even though it has a history and our job is to make sure that what they want to put on this piece of land complies with all the regulations of our zoning and subdivision ordinances.

John Brady: That is correct. And what Mr. Davis has provided me is the paper, the date I asked for was that this was filed and the first meeting on this was in October of 2003, so that pre-dates the first meeting on this specific subdivision and that was the Town Council decided to table it at that point. When I said detrimental reliance, and maybe I just, to make the record clear, I was referring to that it was not before you was the issue about open space and representations made that were given tonight by way of a flyer that made part of the record and a letter. Clearly that with the requirements under our code and the last recorded document, the last recorded document and what Mr. Robertson said is correct, that their argument that they have relied on what the Town approved and was properly signed off by the Town and recorded. To the extent that when I said that you can't, that's not before you. I said, what I said, that was not before you was open space because the open space that may have been previously stated was changed by an action of Council. What it's not before you is the propriety if you believe if that's and issue of that previous decision in 2000, you have to accept that decision and rely on that as the last recorded document and the determination that you have to make is under our statute which in the beginning of Chapter 17 says as follows and has said previously was that "with regard to rules for interpretation of said language, the word shall is mandatory; the word may is permissive". You also have before you proposed findings and conditions with an amendment from Mr. Willard and that any motion you decide if you decide to make a motion to approve it, should include those conditions which would be recordable and would run with the property at that point, as was previously discussed in number 10.

Linda Rogers: Does anyone like to make any comments:

Michael Filicko: A question for Mr. Brady, please. Did this go before Mayor and Council at an actual Town Council meeting when this decision was made to change it from open space to developmental property?

John Brady: As I said before, the records don't reflect what exactly was done in the fall of 2000. All I can find is the recorded document. There are missing minutes and missing agendas for that time period, so it has not been able to be recreated.

Michael Filicko: Thank you.

Linda Rogers: Does anyone else have any comments or questions? Well, I have a comment in that from the very beginning I have felt that this was originally as open space, it was recorded as open space back in the 80's and that I felt it should stay open space but our lawyers has advised us that what we are reviewing here tonight is what I thought it should be. We have to review and consider what it is permitted to be and what it is permitted to be is a developable piece of property. I still feel that it is wrong for this parcel to have been taken from its original intent which was a recreational facility, however it's not the developer's responsibility for ever and a day to maintain without a homeowners association which is something that was never created. All of these were issues that are not problems of planning and zoning or the Town. And so we have to review this for the facts as they are in front of us and make stipulations that even though it will not be to best interest of a few, it may be to best interest of the greater number of people within that development to try to resolve some of their storm water management problems by having these home and I still really say it was originally done as recreation and that is how it should stay, however, legal council advises that we have to look at it for what is in front of us. So I do have a question of, Vince again, which is the house that's on the corner of Boulevard and Mulberry, which way would the house actually front on that particular lot if this subdivision is approved for development?

Vince Robertson: Whichever way you tell us. I'm not sure if either Mr. Brady or Mr. Kerr, off the top of my head, with Milton if it requires the frontage to be the shortest in the front. If that's the case, legally the front would be in Mulberry Street, but the way it's oriented on the lot...

Dean Sherman: I think there are regulations about corner lots.

Linda Rogers: There are some regulations about corner lots, but I'm just saying when you go down Mulberry Street, Mulberry is a main street however that's the main street to the entrance of Shipbuilders. It may be to the best interest to build a house that's got two fronts or the appearance of having two fronts.

Vince Robertson: That's set to something that we'll advise our client to take into consideration. A lot of it, I suspect, will probably be set back away from Mulberry anyway at least what DelDot's telling us at this point, they got to not have an entrance (unintelligible) or where it's probably going to be, a way (unintelligible) it's going to back in Shipbuilders.

Linda Rogers: Well, I'm just like, there's one house on Mulberry Street that sits sideways and it just looks out of character.

Vince Robertson: And there's plenty of room to do that; that lots about 100' wide, so you can side it so it that faces at least Town.

Bill Brierly: Looking at the engineers comments, they seem to be the all reasonable and they seem to be all comments that I would support in posing that they be shown on the final plan. Is there any possibility that we could say that all the comments we see by our engineer should be shown on the final plan? Would it be possible if we just agreed to have all the comments of our engineer be included for the record to be shown on the final plan?

Linda Rogers: I believe we also want to include the conditions, and Mr. Kerr and Mr. Brady and Mr. Willard, whoever wants to answer this question in reference to conditions, stipulations or whatever to repair the storm water problem that is in another part of the development be recorded with this and how would we go about putting that, is it actually put on the plan, is it attached to the findings, how would it be done?

Tim Willard: I made the same suggestion to everybody (unintelligible) that is this subdivision is subject to conditions recorded in Book 5, page 2, or whatever it is, that way you know that's usually how its done. (Unintelligible) So (unintelligible) do a motion to approve these conditions, that can include what Bob, that they also put reference on the subdivision lots.

Virginia Weeks: Mrs. Rogers, I would like to see if we couldn't make it, it is possible to make it part of the site plan that they have to be recorded together, so there can't be a change that it follows through from the moment it leaves us through the Town Council to Town Councils changes and then goes?

Linda Rogers: Say that again.

Virginia Weeks: I would like to make sure that whatever the agreement is, that it travels with the site plan so that there's no...

Linda Rogers: It would be part of the notes on the site plan, correct? The final?

John Brady: Yes. It would be on the face of the site plan. If you wanted to have another document which would be recorded as Mr. Willard said, in a specific book, referencing the parcel numbers that could be done also.

Virginia Weeks: I also would like to see us consider, rather than...I would feel a lot better about this rather than tying this to a certificate of occupancy, asking the Town Council to consider tying it to a building permit.

Linda Rogers: As in you...?

Virginia Weeks: As in get the sewer fixed before he's allowed to build houses?

Linda Rogers: The storm water?

Virginia Weeks: The storm water.

Linda Rogers: Can we do that?

John Brady: It has here that in paragraph 9E that as improvements are made to the lot, the developer should comply with the requirements set forth for another plan approved by the Town engineer. No certificate of occupancy, and I'm skipping a few of these, shall be released for lots

in the proposed subdivision until the storm water management plan is complete, inspected and approved by Town engineer. I believe that language would deal exactly with your concerns.

Virginia Weeks: Okay.

Louise Frey: Can we also, Mr. Kerr, can we also request lighting? I know it's not in your notes, but do we have the right to ask him to put lighting in?

Bob Kerr: Yes, you do have the authority to require lighting along both roads.

Louise Frey: I would like to see lighting and the types of lighting that you will be putting in.

Linda Rogers: Anyone else have any comments? Questions? Additions?

Michael Filicko: I'm not sure if this is a question for the attorney's present. Mr. Capano stated that he needed help in order to fix the roads and the sewer problem and, correct me if I'm wrong, the help is going to come from the sale of these lots.

Frank Capano: I can borrow against them, I just needed reports. I mean, I don't care who all gets things, record anything you want. I mean, the fact I can borrow against them, I can fix the problem. Then you give me what I need.

Michael Filicko: Even if this the lots don't sell, given the state of the real estate market right now, will the roads and sewer problems still be fixed and addressed?

Vince Robertson: I mean, those conditions clearly state that they would have to be given a time frame those conditions need to be met.

Frank Capano: If you record the plans, I am going to borrow the money against them. I know I can't do it without the lots, but that will fix the storm, and once the storms are fixed, then we'll get the lot and I'll get my money back. We are just trying to fix the problem, believe me.

Linda Rogers: Does anyone else have a question?

Virginia Weeks: Mr. Kerr, just to be sure, I know what Mr. Brierly said, but to be sure, your recommendations included that they look at a turn-around so as not to back out onto the street.

That should be on the final site plan? The lighting should be on the final sight plan. The building heights need to be on the final site plan. The final site plan should be signed? This one isn't. And what else? Did I leave anything out?

Bob Kerr: There was a question of whether you want to require a certain number of shade trees per lot along the road.

Virginia Weeks: Are we permitted to do that?

Bob Kerr: Yes.

Virginia Weeks: I would like, as in the LPD, two shade trees per lot shown. And I would like to see the proposed final with the agreement on the storm water. I would like that to become part of our record.

Linda Rogers: You would like to see what?

Virginia Weeks: The proposed final agreement for the storm water so we have it in Town Hall on what was sent forth.

Linda Rogers: Can we do that with this?

Virginia Weeks: Is that in litigation?

Bob Kerr: I would go with Tim on that one.

Tim Willard: That was a planning commission needs to because it's going to happen, I mean that's required.

Virginia Weeks: Absolutely, but since you have said that there's going to be this, we would just like to see the proposed.

Vince Robertson: Yeah, and what I don't want to get into is the back and forth between me as an attorney and you all as the plan signer or what an engineer says...

Virginia Weeks: Nope, not going to do that. I just want to see what you are going to send to the Council. Thank you.

Linda Rogers: Does anyone else have anything?

Ted Kanakos: How does everything that we have discussed this evening, all the give and all the take, actually become attached to that plan, the final plan?

John Brady: Your motion includes the give, deletes the take, and it becomes a record of what has been recommended to Town Council. Town Council has the final give and take and when they accept it, then that becomes what's required to be on the final site plan so CO's can be issued.

Ted Kanakos: Thank you.

Linda Rogers: Okay. Does anyone feel comfortable making a motion of any type?

Bill Brierly: I make a motion that we do require the items that are on the memorandum done by our engineer, Mr. Kerr, regarding Shipbuilder's Village, as well as any additional items that were brought up by Mrs. Ginny Weeks, such as the street lighting plan, be included on the final site plan.

Linda Rogers: So we have the street lighting that was additional; we have the two shade trees for each lot additional; we have a storm water plan be attached as additional; we have some type of turn-around driveway for each lot so that they can enter out as an additional; we also want to include the conditions that Mr. Willard submitted in reference to repairing the storm water issues that are in the currently developed parcel. Is there anything else in the note from March 26th. Is there anything else we want to attach and have as part of the final site plan when it comes back to us again? Did we miss anything?

Sidewalks have to be shown.

Bill Brierly: Connections to water and sewer.

Linda Rogers: That's part of his last and they will have to comply with everything that is in the ordinance, but...

Virginia Weeks: Question for Mr. Kerr please, just quickly as we're doing this. We no longer allow swale curbing, do we? It has to be...

Linda Rogers: Curb and sidewalk.

Bob Kerr: There is existing curb along both streets. That curbing would stay and sidewalks would be provided where there aren't sidewalks. I believe sidewalks are provided along Mulberry Streets, so it's only along Shipbuilders that sidewalks will have to be added.

Virginia Weeks: And the sidewalks should match the ones on Mulberry Street.

Bob Kerr: Since I'm not sure that they meet the Town code, I'll say they have to meet the Town code which is 5' wide. I'm not sure what DelDot put in.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any conditions that they feel need to be attached to this motion for approval of this subdivision of 7 lots? Do I hear a second?

Ted Kanakos: I'll second it.

Linda Rogers: So we have a motion and a second and we'll do a role call vote.

Ted Kanakos: Yes

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: I must say empathize with you lady's and it seems as though our hands are tied so I am going to have to vote regretfully: Yes

Louise Frey: Yes

Virginia Weeks: Also reluctantly: Yes

Linda Rogers: Okay. Motion carried unanimously.

The next item on the agenda is the application of River Basin Engineering who is requesting preliminary site plan approval for a 1-story, 12,457 s.f. retail building on 1.32 acres in the Milton

Park Center located at the corner of Rt. 16 & Rt. 5. The property is zoned as C1 and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.00.

Virginia Weeks: I have a request. Can we do Parcel B first, because it's the most simple of the parcels.

Linda Rogers: We're doing the parcel in the corner. That is what we're doing.

Michael Filicko: Before we begin, Ralph and Scott, I would like to, for the record, apologize. I made some pretty strong comments after I reviewed the minutes from our last meeting in regards to your employers character and I should have not been as objective as what I was and just stuck to the facts as opposed to making comments about someones character, so for the record, I apologize.

Ralph Larson: I appreciate that. I guess we'll go through the comments and this is an upshot of the workshop we had on May 1st. So, we'll do Parcel B first.

Linda Rogers: What did you say your last name was?

Ralph Larson: Larson.

Linda Rogers: Ok.

Ralph Larson: Okay, I want to go through the comments on that one. On Parcel B, one issue is regarding the 63 free parking spaces required, we only have 62. Mr. Kerrs, or regarding the fire marshal's, we're asking for a waiver for that 1 parking space that would not be there because creating a problem getting around the corner there. Bumper blocks have been provided adjacent to the building as were asked. Sidewalks have been provided to connecting the existing sidewalk at the intersection of Rt. 5 & Rt. 16 as asked, as agreed. The curb and gutter shown along Rt. 16 & Rt. 5 as we discussed in May, May 1st, the location and size of signs is provided; there are new free-standing signs shown, other than traffic control. If that became an issue with a tenant later, that is something they would have to deal with on their own, I guess through your ordinance but we're not showing anything now. Lighting plans have been provided. The one thing I will address the building height. He mentions it's shown to be 40' which is 3 stories. Obviously that's not that's the case. I don't have a final building height yet, but it will be one floor. Depending on the type of pitch on the roof, we're not doing flat roof buildings; there will be pitch on the roofs, so I'm going to guess they might be 24' high at the highest; 22 to 24'. I don't have that done yet; that will be shown on the final plan. Details have been provided for screening and fencing for the dumpster and mention requiring all sides of the building to be the same material, which we are going to do; we have agreed to do that. That will be, we can make a note of that on the plan here again when we get the architectural done that will be shown. And we have put a note on the plan regarding irrigation system. We just got the information on the tenant's line there, so it's being designed right now, but there should be a note on the plan stating there will be an irrigation system there.

Scott Pinder: Actually, I think this is pertinent to the irrigation systems. We requested the fire flow data for the hydrants out there. I think that's need for the design of the irrigation system and there hasn't been a fire flow test there ever, so we're right now in the process of getting that information so that we can finish the irrigation system design.

Ralph Larson: That is all we have in comments and are responding to. Are there any questions on Parcel B? Parcel B is a lot more simpler, I guess. No questions? No comments?

Linda Rogers: Does anybody have anything? There shouldn't be.

Ted Kanakos: Yes. How many signs are there now on the property? Major signs?

Ralph Larson: Two. One at each entrance.

Ted Kanakos: You'll keep those. You want to keep those?

Ralph Larson: Yes. Now they would be reconfigured probably to allow for additional tenants.

Louise Frey: But the same signs? Without making them any larger?

Ralph Larson: Yes. We haven't changed anything. I assume you have a sign ordinance. We'd have to come back if there's any chances; we'd have to go through that anyway.

Linda Rogers: There wouldn't be a sign this parcel because the sign is already located on it, correct?

Scott Pinder: Correct.

Ralph Larson: Right. My earlier comment was if a tenant came in that wanted their own sign there, that's something they would have to deal with, with the Town.

Linda Rogers: Anything else? On your part?

Ralph Larson: Not on Parcel B.

Linda Rogers: Bob, do you have any comments in addition on Parcel B?

Bob Kerr: No, I believe we just went through my list, so I'm only here to answer questions if you have any.

Bill Brierly: I think the fact that there would be a required 63 parking spaces but they've shown 62. I think that that's pretty close to meeting the mark here and I think that they have addressed all the comments pretty well and issues pretty well. Could I make a motion that we do waive the requirement for the extra...?

Linda Rogers: Well, we still have some people that have a comment first, then we'll make to waive the parking space if that's what you desire to do, okay? Does that...do you have any other questions?

Virginia Weeks: The sidewalk will wrap around the property into the parking lot? I assume on 16 there's going to be a sidewalk, correct?

Ralph Larson: Is that where the bank is?

Scott Pinder: There is a sidewalk along both 16 and 5 now. My comment on the earlier one was to connect the intersection of 16 and 5 up into the parking lot with a sidewalk and they have shown that to be accomplished.

Virginia Weeks: You mean in the corner?

Scott Pinder: Right on the corner so that you wouldn't have to...if you came across 16 or 5 from the Town side of 16, that you wouldn't have to go all the way down to one of the entrance to get onto the property. There's now a sidewalk that comes up into the parking lot.

Virginia Weeks: Exactly. I just wanted to know is the sidewalk going to run along the entrance off of 5? Along the exit? On the side of the building here. Route 16, is the sidewalk here?

Scott Pinder: Last time at the workshop, we discussed not having a sidewalk there because I believe the commission felt that they would rather see additional landscaping there because there is a sidewalk on the east side of the entrance road on the side where the bank is.

Virginia Weeks: Okay. Thank you.

Bob Kerr: Now, are these sidewalks going to have curbs?

Ralph Larson: Curb. The question was will there be curb and there is existing sidewalk along Route 16 & 5, and as a requirement of this site plan, curbing is being provided along 16 and 5. So, curbing doesn't exist, it will be provided, sidewalks do exist and they will stay there.

Virginia Weeks: What kind of curbing?

Ralph Larson: A vertical curb...integral curb and gutter.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any questions or comments? No? Would someone like to make a motion of some sort?

Virginia Weeks: I just want to ask, Bob, are you pleased with the lighting plan or do you want it to show the timers on the final site plan?

Bob Kerr: It would be nice if they would address being able to turn some or all of the lights off after hours so that they are not on all night. It was something that was discussed at the workshop

but there isn't anything that was on the preliminary. It would be nice to see it added as something in the final.

Ralph Larson: That's for Parcel B, right?

Scott Pinder: Okay, that's on Parcel B, it's not on Parcel B, but yes, we can.

Linda Rogers: Anything else?

Virginia Weeks: No, thank you.

Linda Rogers: Anything else from anyone? Someone like to make a motion?

Bill Brierly: Regarding Parcel B, I make a motion that we accept the plans that they have submitted tonight as long as they include the comments that the engineer has provided and that we will waive one parking space and allow 62 parking spaces.

Linda Rogers: Is there a second?

Ted Kanakos: I'll second.

Linda Rogers: We have a motion and a second. We'll do a role call vote.

Ted Kanakos: Yes

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: Yes

Louise Frey: Yes

Virginia Weeks: Yes

Linda Rogers: Carried unanimously for Parcel B.

Now we will review Parcel A.

Ralph Larson: I guess I'll just go through the comments. Number one, here again is to discuss the building exterior finish which our response is the same as Parcel B. That will be the case.

On number two, I think I might be a little confused to where we ended up at the workshop. It mentions the parking spaces total 378 required and we show 378.

Bob Kerr: You now have 378 on the drawings that were resubmitted.

Ralph Larson: Now were we going to eliminate some of those for dumpster areas in the back.

Didn't we talk...I thought we talked about that?

Bob Kerr: I thought so.

Linda Rogers: So did I.

Ralph Larson: And I thought we weren't going to put them around the pond because we didn't...

Bob Kerr: I thought so but they were still there.

Ralph Larson: Okay. I'll have to talk to the engineer about that.

Scott Pinder: There was gentleman that was at that meeting.

Ralph Larson: Gary was here. I think he might have missed his note on that, but I think what we were going to eliminate, not add, parking in the back so we would have room for those dumpsters that have accumulated by the other tenants. And not do the parking right up against the pond because it was felt it wasn't needed and that was a waiver we were asking for and obviously that shouldn't have been on the plan. Is that your recollection? I mean that's what I recollect.

Michael Filicko: Will the dumpsters be fenced in so that they cannot be seen?

Ralph Larson: Yeah, we'll get to that. So when we come back, we'd like to make that change on the final plan regarding the parking. Number 3, the board fence and this is something that was supposed to have been done apparently the first time around; the fence not behind the whole center but behind the strip part and I believe part of the Dollar Tree where the property juts out to the road. I offered to put landscaping there but when we looked at it we're right at the property

line, right at the area of the road easement, so we will put the board fence there. And that's something we've already started getting prices on, so that's something that has to happen anyway. I know that was on the original plans. And we do show a detail on that. The curb and gutter along Rt. 5 as we've discussed is in the plans. Here again, location and size of existing signs is provided. We haven't added any. Here again, the building height is shown at 40', obviously that is not going to be the case; it's a one story building. When I bring in the final plan we'll have a height on there; it may be a range of a couple feet. Minimal lighting should be used on the west side of the building; shields to be provided. We showed them on Parcel B so we're going to need to add those to Parcel A, correct? Okay. And same thing with the timer; we can add that. Details for screening and fencing around the dumpster area; this is behind the Happy Harry's is where we are talking about?

Bob Kerr: This will be adjacent to the new one story building.

Ralph Larson: Okay, we do show detail on that.

Bob Kerr: One of my concerns there, Ralph, was that some of the dumpsters that are there now are taller than 6'. I don't know what they call it, but I think they would show over top of a 6' wall. I want to make sure that doesn't happen out here at the new location because it is very much out in the open. You had talked one time about it might not be 2 dumpsters but rolled.

Ralph Larson: With final we'll either make a note on the type of dumpster limiting the height or raise that barrier. Let me look into that a little bit.

Virginia Weeks: Mr. Kerr, I'd also like to request that the dumpsters be removed from the grassy area next to Food Lion. They should be behind the store.

Bob Kerr: Are those actually behind Sterling Optical?

Virginia Weeks: They are somewhere there, but they don't belong on the grass.

Ralph Larson: Okay, well that's a management issue. We'll deal with that.

Virginia Weeks: Thank you.

Ralph Larson: Here again, irrigation system. There's a note on the plan that's still being designed. Number 10, additional landscaping, we show that behind the Dollar Store and the Happy Harry's. The last time we talked about a fence vs. landscaping. I felt that you all would rather see landscaping rather than a big wood fence. So we'll have the fence behind the strip and part of the Dollar Store and then the landscaping where the broader area is along the back of the road there. There should be detail on that landscaping.

Virginia Weeks: Question. On the irrigation, your plans say it's going from the entrance on 5 to the corner of 16. What about the grassy area on the other side of the entrance.

Ralph Larson: The entrance on 5?

Virginia Weeks: Yes. You're landscaping plan or something says the irrigation is going from the entrance to 16. What about this area here; that'll be curbed and also irrigated?

Ralph Larson: We're not making any changes there other than we are going to redo the landscaping. I don't think we're showing irrigation. I don't know that we can get under...I don't know what would be involved in getting under that section.

Bob Kerr: I believe at the workshop we discussed specifically from entrance on 16 to entrance on 5 is what was discussed. You have the right to change that but what we discussed at that time was entrance to entrance.

Ted Kanakos: Was there landscaping involved in that? Additional landscaping because we didn't want irrigation there or (unintelligible).

Ralph Larson: There's no change to the landscaping, would that be east or north of the entrance on 5.

Virginia Weeks: And no curbing? So we'll have this thing that will be un-landscaped and ill-maintained with no curbing on one side and on the other side we'll have beautiful landscaping and irrigation and curbing?

Ralph Larson: Well, can I comment on that? If you review the landscape plan, there should be a sheet stating the scope of maintenance that's going to be required and that will be for the whole parcel. Did you get that Bob? There should be something on there?

Virginia Weeks: It does and it calls for the amount of water to be given...the maintenance plan.

Ralph Larson: It should call for pre-emergent weed control, fertilization, insect control.

Virginia Weeks: And supplement natural rainfall to provide 1" of water per week, May to August.

Ralph Larson: Alright, I just have a note that that was on there. I haven't seen that but when we were at the workshop last time, we discussed the impracticality of getting under the asphalt to the islands and to that other section there for irrigation. And we're not doing any improvements, or sidewalk or road improvements on that side of the entrance.

Virginia Weeks: Yeah but you want a lot of parking waived. It would seem to me to uniform the landscaping of the entire Parcel A...

Linda Rogers: Mr. Brady.

John Brady: Because our current ordinance does not mandate that, we cannot require any irrigation at all. Any irrigation they wish to provide would be voluntary in nature.

Virginia Weeks: Could that may be something that...?

Michael Filicko: Mr. Brady, we are waiving parking lot, so isn't that...?

John Brady: You can't impose anything under the ordinance that's, under a waiver that's not required under the ordinance. Right now there is no requirement for irrigation. If they're saying if they want to, and based on the map that they presented tonight, there is no waiving of parking. As I previously informed you, technically they could put dumpsters on the parking spots and that's currently under our ordinance, although we don't encourage it, it is what the law says and that's why I proposed and drafted something that you'll see shortly about eliminating that little loophole in the shopping centers, because currently your zoning ordinance allows you to stripe a parking spot, and if they want to put a temporary object like a shopping cart collection device in there, that's okay. They want to put a dumpster in that parking spot currently, that's okay. But that's something, based on your comments previously, needs to be fixed. But for purposes of tonight, the ordinance as it stands today, for when the application came in under last fall does not require anything regarding a irrigation system. It does require that landscaping be put in place and that the landscaping be maintained. And as I told you before, it is not subjective, per say, to what we think, but objective standards it would have to be in the findings and recommendations. That's what I'm just suggesting that you look at; things that can be objectively checked by code enforcement officer because after it leaves planning and zoning it will be up to the code enforcement officer to enforce what has been agreed to and to what has been recommended in the preliminary plan, subject to the final plan, and the final plans approval by this board.

Virginia Weeks: But at the same time, may I not request that they landscape the other side of the entrance so the entrance appears beautiful?

John Brady: And I believe that the, if I'm reading this right and I'm not an expert on these, I'm trying, I believe that there is some landscaping proposed.

Virginia Weeks: But not the...

John Brady: It looks like there is landscaping proposed on the far side of the entrance going east on 5 past the entrance, but just, if I'm... I'm saying there's no additional proposed currently; there is landscaping and that would have to be maintained.

Ralph Larson: We can add landscaping there. There's a big storm water pond there.

Virginia Weeks: I would imagine, for your own benefit, to protect your own property, you would want to do that.

Ralph Larson: Do what?

Virginia Weeks: Make sure the landscaping on both sides is equitable.

Ralph Larson: I understand that. I can't say that we can put irrigation there without checking you know. I'm not an expert on that. I don't know don't know what's involved in getting underneath the street there. That's a major entrance; it's probably DelDot is involved in that. I'm not sure what's involved in doing that. We'll enhance the landscaping there. It's the same as the island. We talked about this at the May 1st meeting, that there were certain areas we could not get irrigation to. Going back to the parking waiver that I'm asking for and you're offering, that was part of doing irrigation on the original plans. All the improvements are going to be irrigated. That's what we had agreed on.

Linda Rogers: Does anyone else have any questions or comments?

Virginia Weeks: Will shields be on the lights? You mentioned shields on lights on the west side of the property. Will all the lighting be shielded?

Ralph Larson: On the building itself you mean or the ...

Virginia Weeks: In the parking lot, will the lights have shields?

Ralph Larson: If it needs to be shielded. I don't think all the lighting in the lot now is shielded. I think we shielded what was requested of us to shield.

Linda Rogers: Does the building in the front have wall packs?

Ralph Larson: If there are wall packs, they'll be shielded. I think we talked about that, shielding the wall packs.

Linda Rogers: Anything else?

Louise Frey: Mr. Brady, do the final sight plans have to be signed by the owner? Owner certification?

John Brady: Yes. That is a requirement for the final.

Ralph Larson: I'll sign it.

John Brady: Preliminary, I think. Final, absolutely.

Virginia Weeks: Mr. Kerr, question. Is there room around that storm water to put the parking as shown?

Bob Kerr: I have not gone out and verified that the drawing is accurate. They are showing that it will fit. Without going out and doing a survey, I can't say one way or the other. It's their responsibility...

Virginia Weeks: Obviously it will fit, but what would the affect be on the storm water?

Linda Rogers: But weren't we giving you a waiver for that anyway?

Scott Pinder: Yes. That will be removed.

Ralph Larson: That will be taken off the plan. We talked about trying to back off on some of the asphalt on the site is what we were talking about. I think we all agreed there's plenty of parking there and we were just trying to eliminate additional impervious surface.

Virginia Weeks: When and if Food Lion comes in to expand?

Ralph Larson: If they do, if and when they do, that's something that will have to be dealt with at that time.

Virginia Weeks: Thank you.

Louise Frey: Mr. Larson, did you say how high the building was going to be, what was the total height? Did I miss that?

Ralph Larson: I don't know for sure, I am going to imagine it's going to be 24-28', because we are doing a pitched roof as opposed to flat roofs. And maybe not even that high, but it wouldn't be more than 28.

Virginia Weeks: Would there be storage up above the first floor? Thank you.

Louise Frey: No access to a second floor at all?

Linda Rogers: It's not a second floor, correct?

Ralph Larson: No.

Linda Rogers: Single story?

Ralph Larson: Like an attic.

Virginia Weeks: There'll be an attic?

Ralph Larson: Well, nobody will be up in there. There might be air handlers or something like that, but it won't be...

Virginia Weeks: Will there be storage up there?

Ralph Larson: No.

Linda Rogers: Do you have a question?

Bill Brierly: I have a question for our engineer, Bob Kerr. In the last set of remarks that you had about the parking spaces, you said that with the buildings equaling the 75,535 s.f., that based on the one space per 200 gross s.f., there was 378 parking spaces required but after the new building is constructed, there'd be only 338 remaining parking spaces. What's changed between that and your remarks in this current, because now you're saying they have 378. Where did they get the extra?

Bob Kerr: I don't know and I counted this thing so many times the other day to make sure there were 378, and I don't know why the number didn't come up that way the first time whether they added a couple or something, I don't know.

Bill Brierly: Or maybe that they'll label them for small cars only or motorcycles?

Bob Kerr: No, the spaces haven't gotten any smaller.

Ralph Larson: Well I think that the description of the space is rather high, but we're limiting the spaces behind Happy Harry's.

John Brady: You're down by 20 spaces and you don't (unintelligible). We're actually bigger than some other Towns around here. Some other Towns are usually done by 18 (unintelligible).

Linda Rogers: Does anyone else have any questions, concerns, or additions?

Michael Filicko: How will the property, not the property but the landscaping, be maintained that is not irrigated?

Scott Pinder: According to the maintenance...

Ralph Larson: Probably the way most landscaping in the State of Delaware is maintained.

Robin Davis: Excuse me, I need everybody to talk into the microphone. Everybody's walking away from the microphone and it's not getting recorded.

Michael Filicko: My question was, if it's not irrigated, it will obviously dry out in the summer and right now it's looking very dry, there's bare spots in the grass. How could that be prevented?

Ralph Larson: Well, hopefully mother nature will help that. We talked about this on again on May 1st. I don't know of one shopping center in the State of Delaware that has an irrigation system, so it's a matter of, which we have in the specs regarding fertilization, weed control, etc., the irrigation we are adding is an enhancement that most centers do not have. There could have been soil issues there before, I don't know. I mean I'm not sure, but as all this gets torn up and redone, obviously there's a big investment in it and the irrigation where we are going to put it in will help, obviously. But, I can't, other than that, we've set standard where the site will be visited. There are ways to get water trucks out there, which we've done a couple times when they planted, but the problem is sometimes they planted at the wrong time of the year. So here again, I don't know and you can correct me if I'm wrong, Bob, but I don't know of any shopping center in Delaware that has an irrigation system. There might be one or two, but 99% of them do not. So it's not, the irrigation is not the cure all.

Virginia Weeks: Can I comment on that please? Although they're not shopping centers, the entrance to WBOC on Chestnut street; the entrance to Chestnut crossing on Chestnut Street; the entrance to the Federal Street office building are all very well maintained and if they can do it, I don't understand why it can't be done at the corner of Rt. 5 & Rt. 16.

Ralph Larson: I agree with you, but do they have irrigation systems? I mean, I don't know if that's what's making the difference or not, but...

Virginia Weeks: I have no idea but I would expect that it would be maintained in an equally...

Ralph Larson: Well, we've set standards on the plan and your enforcement code officer would be able to enforce that, so I don't know how you would operate with that. I guess send a letter to the property owner stating that there's a code violation and we would have to deal with that.

Ted Kanakos: I want to revisit one thing from the workshop. Mrs. Weeks had mentioned that she wanted a different array of trees, different trees?

Virginia Weeks: Yeah, more evergreens as promised in the conceptual, as mentioned in the conceptual plan and on this particular landscaping plan, less than half of them are evergreens. The ones that you've presented to us.

Ralph Larson: Well, I'm not a botanist, but our landscape architect told me that 50% are evergreens and that's typically...

Virginia Weeks: I believe it's 118 evergreens and 184 are not.

Ralph Larson: He says that's pretty typical is 50% so there are seasonal color and changes on the property. We can add more evergreens but it's just taking away something else.

Virginia Weeks: I would let it go, but it's not 50%. It is 115 are evergreens and 184 or not. I had a landscape artist review it.

Ralph Larson: Okay, well I have note from him and I can ask him about it.

Virginia Weeks: It's fine with me. It's okay.

Linda Rogers: Does anyone else have anything? Is anyone ready to make any type of motion?

Michael Filicko: Ralph, obviously we want that to be as attractive as possible given the fact that it's the gateway to the Town.

Ralph Larson: Understanding.

Virginia Weeks: Linda, has anybody counted the number of spaces we're about to waive? I think that we need to count them to make sure we're all in agreement with how many are being waived, so there's no problem later on?

Bob Kerr: Around the pond and behind Happy Harry's, there are a total of 40 spaces shown.

Virginia Weeks: Thank you. I'd like the motion when made to show that we're waiving 40 spaces and where they're located.

Linda Rogers: Okay. Would someone like to make motion?

Michael Filicko: Before we make a motion, Mr. Brady, is it possible to have a landscape architect review the plan or no?

John Brady: Currently under your ordinance there's no provision for the board to send it to a landscape architect for review.

Michael Filicko: Okay, thank you.

Linda Rogers: Would anyone like to make a motion of any type?

Bill Brierly: Again, I would go with the Parcel A notes made by our engineer and just motion that all his notes and recommendations be made a part of the final plan including the 40 spaces that are to be waived and those 40 spaces to be shown on the plan and the clarification of number 8 where the details for screening and fencing around the dumpster area apply to the one story building on the lot.

Virginia Weeks: Are you going to put a requirement not to have dumpsters on the grassy, open areas?

Bill Brierly: And add that no dumpsters should be on grassy, open areas.

Virginia Weeks: Thank you.

Linda Rogers: We have a motion on the floor, is there a second.

Ted Kanakos: I'll second it.

Linda Rogers: We have a motion and a second. All in favor, roll call vote:

Ted Kanakos: Yes

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: I am going to abstain from voting.

Louise Frey: Yes, but I'm really not happy with waiving all those parking spaces.

Virginia Week: I am going to vote No, because I think that we are waiving a lot of parking spots. I think that they, I'm not satisfied with a 22 or 24' high building that's supposedly is not going to have a second floor storage area, and my living room is 25' high, that's over 2 stories. I can't imagine why you would build a one story building in a shopping area with that much land and that much room inside and not utilize it. I am not satisfied with the landscaping plan, and I'm voting No.

Linda Rogers: Okay. We have majority with 5 Yeses, 1 Abstain and 1 No. Motion carried. I'll entertain a motion to adjourn.

Louise Frey: So moved.

Linda Rogers: We have a motion is there a second to adjourn?

Bill Brierly: I'll second.

Linda Rogers: We have a motion and a second to adjourn, all in Favor say "Aye". We're adjourned.